

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 301 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No.
 2. To be referred to the Reporter or not? Yes. :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? -
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? -
 5. Whether it is to be circulated to the Civil Judge? : NO
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PATEL SHAMJIBHAI LADHABHAI

Versus

THE STATE OF GUJARAT

Appearance:

MR MD PANDYA for Petitioners
MR SUDHANSHU S PATEL AGP.
MR ARUN H MEHTA for Respondent No. 2
MR MD RANA for Respondent No. 8

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:- 10/05/2000

ORAL JUDGEMENT

There is a long history of litigations namely
civil proceedings, land acquisition proceedings, tenancy

proceedings, revenue proceedings etc. between the parties. At this stage I am concerned with the present appeal which is in respect of the land acquisition proceedings.

2. Lands bearing Survey No. 387/A/1 and 387/A/2 and 386 situated in the sim of Modasa were acquired under the provisions of the Land Acquisition Act, 1894. The plaintiff moved the Collector that the lands which have been acquired were in his possession and therefore he should be awarded compensation. Therefore, the Collector finding the appellant in possession of the land acquired and no other claimant passed the award in favour of the plaintiff appellant. The plaintiff again moved the Collector for enhancement of the compensation and requested to refer the matter to the concerned authority. The Collector referred the matter being Reference No. 5/65 to the Civil Judge (SD), Modasa. The Civil Judge (SD), Modasa by the judgment and award dated 31-8-1967 enhanced the compensation at the rate of Rs.6000/- per Acre of Survey No. 387 and Rs.5000/- per Acre for Survey No. 386. The State Government filed First Appeal No. 505/68 against the judgment and award passed by the Civil Judge (SD), Modasa before this Court. The Government moved an application being Civil Application No. 1255/68 in First Appeal No. 505/68 to stay operation of the judgment and award passed by the Reference Court to direct it to deposit the amount at the enhanced rate and to permit the plaintiff appellant to withdraw the same on furnishing security. Accordingly, the order was passed on 17-7-1968 by this Court and stayed the operation of the judgment and award of the Reference Court directing the State Government to deposit the amount of compensation at the enhanced rate before the Civil Judge (SD), Modasa and the plaintiff appellant was permitted to withdraw the same on furnishing necessary security. Accordingly, the plaintiff no. 1 withdrew the amount of compensation as per the order of this Court after furnishing the security of appellants no. 2 and 3. The appeal was decided by this Court on 23-6-1972 directing the plaintiff to refund 1/3 share of the aggregate in respect of Survey No. 386 (in respect of which the respondents have no objection or concern). The plaintiff - appellant was further directed to deposit 1/3 share of additional compensation as awarded by the Civil Judge (SD), Modasa along with the proportionate interest thereon (respondents claimed this amount). The plaintiff was also directed to pay compensation under the order of this High Court. The plaintiff was directed to pay interest at the rate of 4.5% p.a. on all the three amounts.

3. The respondents moved application being Application No. 16/74 vide exh. 1 before the Civil Judge (SD), Modasa for a direction to the plaintiff appellant to deposit the amount of Rs.37,274-70 which has been taken away by the plaintiff under the order of this Court. Restitution Application No. 16/74 exh. 1 was rejected on 2-2-74 on the ground that he was not a party in any capacity before the Land Acquisition Officer or Reference Court or in Appeal No. 505/68 before this Court. The plaintiff was also not a party in Darkhast No. 3/68 nor he was a party in the relevant proceedings. Therefore, he has no locus standi to make the application and the application was rejected by the order dated 2-2-1974. The respondents filed Civil Revision Application No. 1199/77 before this Court against the order of the Civil Judge (SD). The said revision application was disposed of by this Court on 1-2-78 with a direction to the Civil Judge (SD) to dispose of the restitution proceedings in Civil Misc. Application No. 36/74 and the Government was directed to pay compensation amount with respect to the land Survey No. 387/A/1 and 387/A/2 to the respondent if he is legally entitled after disposal of restitution application. The State Government filed Civil Misc. Application No. 36/74 in the Court of Civil Judge (SD) for restitution u/s 144 of the Civil Procedure Code. During pendency of Civil Misc. Application No. 36/74 the respondents got himself impleaded as a party. The Civil Judge (SD) mentioned that the plaintiff no. 1 has not deposited and the plaintiffs no. 2 and 3 gave their surety. Hence, he was directed the plaintiffs no. 1 to 3 to deposit the aforesaid amount and these facts are in dispute in the present case.

4. The plaintiff filed Regular Civil Suit No. 106/78 against the State Government and the respondents who are sons and legal representatives of Ambalal Sura and Chandulal Sura for declaration and injunction. The suit was dismissed by the judgment and decree dated 15-12-1980. The plaintiff - appellant filed Civil Appeal No. 1/91 before the District Court, at Himatnagar. The Assistant Judge, at Himatnagar dismissed the said appeal vide judgment and decree dated 18-9-1991 then this appeal has been preferred in this Court against the judgment and decree of the Courts below. The learned counsel for the appellant has raised six substantial questions of law mentioned in the Appendix to the memo of the appeal.

5. Learned counsel for the appellant contended that the respondents were not parties in the land acquisition

proceedings throughout the stage of filing of the claim before the land acquisition proceedings till enhancement of compensation awarded passed by the Civil Judge (SD) and even before this Court in First Appeal No. 505/68. The respondents moved the application before the Civil Judge (SD) for restitution to permit the plaintiffs to deposit the amount taken away by them under the orders of this Court. That application was rejected by the Civil Judge (SD) holding that he had no locus standi and he was not a party in the land acquisition proceedings and before the Civil Judge (SD) in reference proceedings and even before this Hon'ble Court in First Appeal No. 505/68. When the restitution application was moved by the State Government, the respondents also moved the application for impleading them as party respondents and that application was allowed. As such, the respondents never claimed the compensation for the lands acquired under the land acquisition proceedings. In case, the respondents are allowed to withdraw the amount of compensation as owners of the land in dispute great injustice would be caused to the plaintiffs inasmuch as the plaintiff no. 1 was held to be in possession of the land by the Collector. He moved the application for awarding compensation for the lands acquired in the land acquisition proceedings. Finding the appellant in possession of the land acquired in acquisition proceedings and no other claimant, the Collector allowed that application and ordered for payment of compensation to him. The appellant plaintiff no. 1 filed the application before the Collector for enhancement of compensation at higher rate and the matter was referred to the Reference Court i. e. the Court of Civil Judge (SD) for enhancement of compensation. At his instance the compensation was enhanced by the Civil Judge (SD) in Reference. The Government filed First Appeal No. 505/68 before this Court against the order of the Civil Judge (SD) enhancing the compensation. As there was no other claimant as respondent in the appeal, the Government was agreed to deposit the enhanced amount of compensation and to permit the appellant no. 1 to withdraw the same on furnishing security and as per the terms and conditions of the order of this Court the amount was withdrawn by the plaintiff no. 1. However, it is true that this Court had decided the appeal and directed to deposit the amount withdrawn by him in the Court of Civil Judge (SD) and the appellants are ready and willing to deposit the same.

6. The contention of the learned counsel for the appellant is that there is no direction by the Court for variation or reversal or modification in the original

order of the Reference Court. As such no application for restitution is maintainable in the eye of law. As such the order passed by the Civil Judge on the application moved by the State Government and the respondents who were allowed subsequently to be impleaded in the restitution application, is nullity and not binding on him. Secondly, when the application for restitution by the respondents was moved, that application was rejected by the Court concerned, he is barred by the principles of estoppel to agitate again when the State Government moved an application for restitution in which they got themselves impleaded as party. Thirdly, the provisions of the Land Acquisition Act provide elaborate and exhaustive remedy in the matter of claim to compensation, it oust the jurisdiction of the Court to award compensation to a person who makes a claim for awarding compensation on the basis of title not established in land acquisition proceedings which is illegal and bad in law.

7. The main question in this case is different one.

Learned counsel for the appellants contended that as per the subsequent order of this Court, if the respondents are entitled then they should be given that amount of compensation. The respondents were not at all in the picture in the land acquisition proceedings and they have not claimed the compensation and they have not been impleaded as party in those proceedings and on the basis of the judgment and decree in other civil suits, the respondents have been declared as owners of the land of Survey No. 387. Hence, they will take advantage by taking away the entire amount of compensation on the basis of the orders of this Court where it was not disclosed that they were not party in the acquisition proceedings nor before Reference Court nor before this Court in First Appeal. Therefore, the respondents may file a fresh suit claiming the title of that amount of compensation which has already been deposited by the State Government in the Court of Civil Judge (SD), Himatnagar wherein the appellants can raise plea that the judgment and award granting compensation to the appellant was justified and legal one and the respondents are not entitled for any amount of compensation even though they have been declared as landlord or owner of that property. Even if it is assumed that there were some irregularities in appearing as claimants before the Land Acquisition Officer in the land acquisition proceedings and those irregularities are curable and it can be decided by the competent Court of law that the respondents are entitled or not to the amount of compensation. The appellants can also raise plea of bar of limitation and the respondents

will be estopped from claiming the amount of compensation for the land in question on the ground of laches, delay and acquiescence. Even if it is assumed for the sake of argument and not as admitting fact that the appellants have acted on behalf of the respondents in the land acquisition proceedings and obtained that amount and he thereafter agitated his claim for enhancement of compensation which was allowed at his instance on behalf of the defendants and that amount of compensation is being claimed and accepted by the respondents. The appellant has incurred huge amount and labour in getting orders in his favour. As such, they are also entitled u/s 70 and 71 of the Contract Act for the expenses incurred by them in the litigations throughout the proceedings. It is also open for the plaintiffs appellants to raise plea that redetermination u/s 28A of the Act is not available to the respondents and the amount can only be determined in separate suit where legal pleas available to the plaintiffs - appellants can be raised and decided by the court of law. In the case reported in AIR 1981 Allahabad, 47, the Allahabad High Court has held that a party which does not set up its right to receive the compensation by moving the District Court or the Court before which the matter was pending for being impleading as party, such party would not be entitled for such compensation as the matter relating to the compensation has already been decided and now the executing proceedings are only pending. In the execution proceedings, the party who has not claimed any compensation at any stage will not be permitted to take away that amount of compensation. A third party in whose favour there is no award under the Land Acquisition Act, if he claims right to recover compensation, he is required to file separate suit to recover share from the person who receives the compensation as per the award. In such suits all equities will have to be worked out while determining the claim of both the sides. Learned counsel for the appellant also relied on the decision of the Bombay High Court in the case of Shri Deo Sansthan Chinchwad and others Vs. Chintaman Dharnidhar, reported in AIR 1962 Bombay, 214. wherein it is held as under :

"In the present case, the question of apportionment of the compensation amount appears to have been altogether lost sight of by the Land Acquisition authorities despite entries in the Record of Rights. When the plaintiffs applied to the Collector for their share in the compensation money, the amount had been already paid to the Sansthan and the Collector does not appear to have acted under any of the provisions of the

Land Acquisition Act. He merely asked the plaintiffs to apply to the Sansthan for their share in the compensation amount and, in case of refusal, to file a suit to recover the same. Mr. Chitale contends that in these circumstances in view of the third proviso to Section 31 (2) of the Act, nothing contained in Subsection (2) shall affect the liability of any person who may receive the whole or any part of any compensation awarded under the Act, to pay the same to the person lawfully entitled thereto. Unless, therefore, the claim of such a person, who is lawfully entitled to a share in the compensation money, is already adjudicated upon under the provisions of the Land Acquisition Act, or such person having had notice of such proceedings, appears therein and fails to assert and prosecute his claim to a share in accordance with the provisions of that Act, he would be entitled to file a suit to recover his share from the person who may have received the whole or any part of the compensation amount awarded under the Act."

8. The learned counsel for the appellants has relied on his contention that the title to the compensation can not be decided by the Collector and the reference proceedings have already been over, that can be adjudicated in a separate suit on the decision of the Apex Court in the case of Dr. G.N. Grant Vs. State of Bihar, reported in AIR 1966 SC 237. Relevant observation is being reproduced as under :

The Collector has no power to finally adjudicate upon the title to compensation: that dispute has to be decided either in a reference u/s 18 or u/s 30 or in a separate suit. Payment of compensation, therefore u/s 31 to the person declared by award to be entitled thereto discharges the State or its liability to pay compensation (subject to any modification by the Court), leaving it open to the claimant to compensation to against his right in a reference u/s 30 or by a separate suit.

9. On the contrary, the learned counsel for the respondents contended that the Court has power u/s 144 of the Civil Procedure Code and he relied on the case of Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd. and Another, reported in 1996 (4) SCC 622, wherein it is held that the Courts in India as Courts of equity have the powers to reach the illegally obtained

property even in the hands of relatives and associates and restore it to the victims of the fraud or corruption by public officials and pass necessary orders and directions. Learned counsel for the respondents also further contended that even the case does not fall directly in strict sense in the restitution proceedings u/s 144 of the Civil Procedure Code. The Court has inherent powers u/s 151 of the C.P.C. and the Court can direct u/s 151 of the C.P.C. the appellant to deposit the amount taken away by him under the orders of the High Court. He relied on the decision of the Supreme Court reported in AIR 1995 SC 441, wherein it has been held that the jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of S. 144 so far as a decree or an order is varied or reversed in any appeal, revision or other proceedings or is set aside or modified in any suit instituted for the purpose. The instant case may not strictly fall within the terms of S.144 of the C.P.C. but the aggrieved party in such a case can appeal to the Court concerned having general powers of restitution inherent in every court.

10. Niranjan Sura appeared as a party in person and contended that he was a party in land acquisition proceedings before the Prant Officer, Modasa. As such, it cannot be said that he was not a party in the proceedings. From the long history of the litigations between the parties in civil proceedings, land acquisition proceedings and revenue proceedings that the appellant no.1 has been declared as trespasser and the respondents have been declared as landlord or owners of the property in dispute. As such, the respondents are entitled to the amount of compensation which has been taken away by the appellant.

11. From the land acquisition proceedings it appears that except at one stage one of the respondents was a party before the Prant Officer and none of the parties have made any claim for compensation before the Land Acquisition Officer or before Reference Court or even before this Court in Appeal No. 505/68.

12. Considering the appellant as an occupier or holder of the land in question, he received the amount of compensation as per the orders of this Court. He is ready to deposit the same amount of compensation in the Court concerned. But his grievance is that on the basis of the orders in the civil litigations, the respondents

will take away the entire amount of compensation for which they may not be entitled under the Land Acquisition Act or barred under the Limitation Act or by the principles of law. Whether they are entitled for the amount of compensation or not and whether the respondents being landlords or owners of the property in dispute have any right, are separate issue which can be decided by the competent Court of law. In those proceedings the plaintiff would be entitled to raise legal various plea or issue as to whether the respondents are estopped or barred by limitation, the principles of estoppel or by laches, delay and acquiescence. Even the appellant would be entitled to the expenses incurred by him for labour charges from the initial stage of the land acquisition proceedings till the last stage in the High Court in Appeal No.505/68. That issue cannot be decided in the restitution proceedings. In my opinion, the amount taken away by the appellant should be deposited in the Court of Civil Judge (SD), concerned as the Court has power to pass such orders under inherent powers even the powers u/s 144 of the C.P.C. in strict sense not available and that amount of deposit should remain deposited there till the title to compensation is decided by the competent Court of law in separate civil suit.

13. Accordingly, this appeal is allowed in part with modification of the decree that the appellant is directed to deposit the amount of compensation only in respect of Survey No.387-A-1 and 387-A-2 in the Court of Civil Judge (SD) concerned within three months and the amount of compensation which is to be deposited by the appellant no. 1 shall remain deposited in the Court of Civil Judge concerned which is directed to keep the aforesaid amount of compensation deposited till the issue of title to compensation amount is decided in a separate civil suit by the Competent Court of law. There shall be no order as to costs.

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/JVSatwara/